

SENATE BILL REPORT

SB 6615

As Reported By Senate Committee On:
Judiciary, February 01, 2008

Title: An act relating to the authority of a watershed management partnership to exercise powers of its forming governments.

Brief Description: Granting authority of a watershed management partnership to exercise powers of its forming governments.

Sponsors: Senators Tom, Prentice, McCaslin, Kline and Weinstein.

Brief History:

Committee Activity: Judiciary: 1/25/08, 2/1/08 [DP, DNP, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; McDermott and Weinstein.

Minority Report: Do not pass.

Signed by Senators Carrell and Hargrove.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Lidia Mori (786-7755)

Background: State law requires watershed planning to include an assessment of water supply and use in the planning area. It also requires development of strategies for future water use and may include elements such as water quality, habitat, and instream flow. Watershed planning may be conducted for one watershed or for one or more Water Resource Inventory Areas (WRIAs). The WRIAs are water resource areas designated by the Department of Ecology as of January 1, 1997. Local governments initiate watershed planning by creating a planning unit and designating a lead agency to provide staff support. When a watershed plan is approved by a planning unit, it is submitted for approval by the legislative authorities of all counties with territory in any WRIA for which planning was conducted. The plan must be approved by the counties after notice, public hearings, and a joint session to consider the plan.

Public agencies may enter into interlocal agreements to form a watershed management partnership to implement all or parts of a watershed management plan. A watershed

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

management partnership may create a separate legal entity to conduct the cooperative undertaking of the partnership. Such a separate legal entity may contract indebtedness and may issue general obligation bonds.

The Interlocal Cooperation Act allows public agencies to enter into agreements with one another for joint or cooperative action. Any power, privilege, or authority held by a public agency may be exercised jointly with one or more other public agencies having the same power, privilege, or authority. A "public agency" for purposes of interlocal agreements includes any agency, political subdivision, or unit of local government.

Many different public and private entities have been granted the power of eminent domain. Under the Interlocal Cooperation Act, if two or more entities with the power of eminent domain join to form a watershed management partnership, then the partnership itself will have the power of eminent domain as well. However, in such a case, the power of eminent domain may not extend to the separate legal entity created by a watershed management. Such a separate legal entity may not be a "public agency" within the meaning of the Interlocal Cooperation Act.

Summary of Bill: A watershed management partnership and a separate legal entity created by it to conduct the operation of the partnership may exercise the power of eminent domain if all of the cities and water sewer districts that form the partnership do themselves have the power of eminent domain. The eminent domain authority may be exercised only for the utility purposes of the watershed management partnership. In addition, the watershed management partnership must have been formed or qualified prior to July 1, 2006, and it must not be engaged in planning or implementing a plan for a water resource inventory area. It must be governed by a board of directors consisting entirely of elected officials from the cities and water-sewer districts that constitute the partnership.

A watershed management partnership that exercises eminent domain authority is required to report to the relevant legislative committees by July 1, 2010. The report must address the status of the water system's projects, and the use of the eminent domain authority granted in this act, including use of the authority for the siting and construction of the system. Additionally, the report must inform the legislature of efforts to inform and involve the public of the affected areas as to the siting and construction of system facilities.

A watershed management partnership exercising eminent domain authority must comply with the statutory notice requirements pertaining to condemnation of property and also provide notice to the city, town, or county with jurisdiction over the subject property. The notice must be by certified mail and sent 30 days before the partnership board authorizes condemnation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Cascade Water Alliance is made up of five cities and three water districts. Cascade currently provides water to 300,000 residences and 22,000 businesses. It currently provides water from its own groundwater

supply as well as from the city of Seattle. In order to address increasing needs and the declining supply from Seattle, Cascade has contracted with the city of Tacoma for wholesale water purchase and is building new supply and transmission systems. We are working on the acquisition of water rights at Lake Tapps. We need to move water from Lake Tapps and Tacoma up to the Bellevue Issaquah transmission line. We are proceeding with our first pipeline and this will connect, for the first time, the Tacoma water supply system with a King County one. We have selected a route for this that is primarily in public right of way. We have only had to gain easements through a very small number of private properties. We will be building another pipeline to connect the Lake Tapps supply with our supply and it's unlikely we'll be so fortunate to find a route that is in so much public right of way. Without the power of eminent domain, it is difficult for people that sell their land to us to take advantage of the federal tax benefits that are available to people who sell under threat of condemnation. All other water utilities, public and private, in the state of Washington are able to exercise the power of eminent domain. Cascade could have one of its entities exercise the power of eminent domain on its behalf, however, this would be more complicated and expensive and will increase the cost to our ratepayers. In addition, even though there is a court case that seems to say this is possible, it's not for sure and we will likely encounter a legal challenge. The bill is very narrow in scope and effect. The permit process is a separate issue from getting the right of way for the pipeline. The condemnation authority cannot happen unless all eight Cascade members agree. There is no hidden agenda here. There are checks and balances in the bill.

Persons Testifying: PRO: Mary Alyce Burleigh, City of Kirkland and Cascade Water Alliance; Bob Mack, City of Tacoma; Mike Gagliardo, Cascade Water Alliance.